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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,745	12/24/2003	Shigekazu Yasuoka	SNY-048	9090
20374	7590	10/29/2009	EXAMINER	
KUBOVCIK & KUBOVCIK SUITE 1105 1215 SOUTH CLARK STREET ARLINGTON, VA 22202		ART UNIT		PAPER NUMBER

DATE MAILED: 10/29/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Communication Re: Appeal</b>	Application No.	Applicant(s)
	10/743,745	YASUOKA ET AL.
	Examiner Jessee Roe	Art Unit 1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1.  The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
  - (a)  it was not timely filed.
  - (b)  the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
  - (c)  the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d)  the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
  - (e)  the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
  - (f)  a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.
  
2.  The appeal brief filed on 20 April 2009 is NOT acceptable for the reason(s) indicated below:
  - (a)  the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
  - (b)  the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
  - (c)  the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).**
  
3.  The appeal in this application is DISMISSED because:
  - (a)  the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (b)  the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (c)  a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d)  other: \_\_\_\_\_.
  
4.  Because of the dismissal of the appeal, this application:
  - (a)  is abandoned because there are no allowed claims.
  - (b)  is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c)  is before the examiner for consideration.

	/Roy King/ Supervisory Patent Examiner, Art Unit 1793
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The Appeal Brief filed 20 April 2009 is defective because the Evidence Appendix includes "Crystal Structure of Hydrogen Storage Alloys, La-Mg-Ni(x=3-4) System" and Fig. 6.2.6. These references were introduced with the Amendment filed 21 January 2009, but the Appellant has failed to properly cite the references. Appellant is required to submit a new paper properly citing the references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessee Roe whose telephone number is (571)272-5938. The examiner can normally be reached on Monday-Thursday and alternate Fridays 7:00 AM - 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V. King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JR/